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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-863]

Honey from the People's Republic of China: Initiation of Anticircumvention Inquiry

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: In response to a request from the American Honey Producers Association and the Sioux Honey Association (collectively "Petitioners"), the Department of Commerce ("Department") is initiating an anticircumvention inquiry to determine whether certain imports are circumventing the antidumping duty order on honey from the People's Republic of China ("PRC").

EFFECTIVE DATE: [Insert date of publication in the Federal Register.]

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SUPPLEMENTARY INFORMATION:

Background

On August 12, 2011, pursuant to sections 781(c) and 781(d) of the Tariff Act of 1930, as amended ("Act"), and 19 CFR 351.225(i) and (j), Petitioners submitted properly filed requests for the Department to initiate and conduct a minor alterations and a later-developed merchandise anticircumvention inquiry to determine whether honey-rice syrup blends are circumventing the antidumping duty order on honey from the PRC. See Notice of Amended Final Determination of

Sales at Less Than Fair Value and Antidumping Duty Order; Honey From the People's Republic of China, 66 FR 63670 (December 10, 2001)(“the Order”).

In their request, Petitioners allege that honey blended with rice syrup (“honey-rice syrup blend”) from the PRC is circumventing the Order. Specifically, Petitioners allege that Anhui Hundred Health Foods Co., Ltd. (also known as Anhui Hengjide Healthy Food Co., Ltd.)’s (“Anhui Hundred”) honey-rice syrup blend represents a minor alteration from in-scope honey blends, because rice syrup is indistinguishable from honey, and therefore, in-scope honey-rice syrup blends (consisting of 50 percent or more pure honey) are indistinguishable from out-of-scope honey-rice syrup blends (consisting of less than 50 percent pure honey). Consequently, Petitioners allege that Anhui Hundred’s honey-rice syrup blend “differs minimally, if at all, from honey and/or covered honey blends that are within the scope of the order.”¹ Alternatively, Petitioners argue that the honey-rice syrup blends are a later-developed product of the subject merchandise because there was no knowledge of blends of honey and rice syrup being commercially available in the U.S. market at the time of the investigation.²

On September 15, 2011, the Department extended the deadline to initiate the anticircumvention inquiry by 45 days, pursuant to 19 CFR 351.302(b),³ with the new deadline to initiate of November 10, 2011. On October 20, 2011, the Department extended the deadline to initiate by an additional 40 days, making the deadline December 20, 2011.⁴ On October 20, 2011, the Department also sent a supplemental questionnaire to Petitioners requesting additional information to support their anticircumvention initiation request. The supplemental questionnaire was due on November 3, 2011. On October 27, 2011, the Department received

¹ See Petitioners’ Request for Scope/Circumvention Inquiry on Honey Syrup from China and Opposition to Anhui Hundred Scope Request on Honey Syrup from China, filed August 12, 2011 (“Petitioners’ Request”) at 33.

² See Petitioners’ Request, at 40-1.

³ See Letter to Petitioners dated February 24, 2011.

⁴ See Letter to Petitioners dated October 11, 2011.

and granted a supplemental questionnaire extension request from Petitioners, making the supplemental questionnaire response due November 14, 2011. On November 14, 2011, the Department received an additional supplemental questionnaire extension request from Petitioners. On November 14, 2011, the Department granted Petitioners' supplemental questionnaire extension request, making it due November 21, 2011. On November 1, 2011, Anhui Hundred submitted comments opposing the initiation of an anticircumvention inquiry.⁵ On November 21, 2011, Petitioners submitted their response to the Department's supplemental questionnaire.⁶

Scope of the Order

The products covered by the order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to the order is currently classifiable under subheadings 0409.00.00, 1702.90.90 and 2106.90.99 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.

Merchandise Subject to the Anticircumvention Request

The merchandise subject to the anticircumvention request is honey-rice syrup blends from the PRC.

⁵ See Opposition by Anhui Hundred to Petitioners' Request to Initiate an Anti-circumvention Inquiry on Honey Syrup from the People's Republic of China, dated November 1, 2011 ("Anhui Hundred Response").

⁶ See Petitioners' Supplemental Questionnaire Response, dated November 21, 2011 ("Petitioners' Questionnaire Response").

Minor Alterations Request

The Department has decided not to initiate Petitioners' minor alterations anticircumvention request which was submitted under 781(c) of the Act. In the case of a "minor alteration" allegation under section 781(c) of the Act, it is the Department's practice to look at the five factors listed in the Senate Finance Committee report to determine if circumvention exists in a particular case.⁷ Petitioners have not provided evidence demonstrating that the cost of modification between Anhui Hundred's product, consisting of 90 percent rice syrup and ten percent honey, and an in-scope product consisting of 50 percent or more honey, could be considered minor. While Petitioners calculated a 2.2 percent difference between a product that is 51/49 percent honey compared to one that is 49/51 percent honey,⁸ the only such product for which the Department has evidence on the record is from Anhui Hundred, which is 90 percent rice syrup and 10 percent honey. Therefore, Petitioners' price comparison is not valid for the purposes of this inquiry, because it is not for a specific product. Petitioners argue an importer might be able to sell a blend of 90 percent rice syrup and ten percent honey for the same amount as one with 10 percent rice syrup and 90 percent honey because of difficulties in testing for the amount of honey in a honey-rice syrup blend.⁹ However, Petitioners have not provided any evidence that any party has engaged in this practice. Additionally, Petitioners have not provided evidence demonstrating that the amount of rice syrup required to dilute a mixture of 51 percent honey down to one that is only 10 percent honey is minor. For all these reasons, there is no basis for the Department to initiate a minor alterations anticircumvention inquiry.

⁷ See Omnibus Trade Act of 1987, Report of the Senate Finance Committee, S. Rep. No. 71, 100th Cong., 1st Sess., at 100 (1987), which explained that in circumvention inquiries regarding minor alterations, the Department should consider such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.

⁸ See Petitioners' Request at 37.

⁹ *Id.*, at 37-8.

Later-Developed Merchandise Anticircumvention Request

Section 781(d)(1) of the Act provides that the Department may find circumvention of an antidumping or countervailing duty order when merchandise is developed after an investigation is initiated (“later-developed merchandise”). In conducting later-developed merchandise anticircumvention inquiries, under section 781(d)(1) of the Act, the Department will also evaluate whether the general physical characteristics of the merchandise under consideration are the same as the subject merchandise covered by the Order¹⁰, whether the expectations of the ultimate purchasers of the merchandise under consideration are no different than the expectations of the ultimate purchasers of subject merchandise¹¹, whether the ultimate use of the subject merchandise and the merchandise under consideration are the same¹², whether the channels of trade of both products are the same¹³, whether there are any differences in the advertisement and display of both products¹⁴, and if the merchandise under consideration was commercially available at the time of the investigation.¹⁵

A. General Physical Characteristics

Petitioners contend that the subject merchandise and honey-rice syrup blends containing less than 50 percent honey have identical physical characteristics. Specifically, according to Petitioners, pure honey, and honey-rice syrup blends with both more and less 50 percent honey content have identical fructose/glucose contents of approximately 70 percent and water contents of approximately 17 percent.¹⁶ Petitioners note that three different test results on the record

¹⁰ See section 781(d)(1)(A) of the Act.

¹¹ See section 781(d)(1)(B) of the Act.

¹² See section 781(d)(1)(C) of the Act.

¹³ See section 781(d)(1)(D) of the Act.

¹⁴ See section 781(d)(1)(E) of the Act.

¹⁵ See Later-Developed Merchandise Anti-circumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order, 71 FR 32033, 32035 (June 2, 2006).

¹⁶ See Petitioners’ Request at 28, 43, Exhibit 2 at I-5, and Exhibit 3 at 2-3.

demonstrate that honey-rice syrup blends, regardless of honey content, have similar or identical physical characteristics.¹⁷ Consequently, Petitioners allege that Anhui Hundred's honey blend of 90 percent rice syrup and 10 percent honey is indistinguishable and has the identical physical characteristics as both pure honey and honey blends containing both more and less than 50 percent honey.

B. Expectations of the Ultimate Purchasers

Petitioners state that users have the same expectations for honey-rice syrup blends and the subject merchandise. Petitioners support their claim by noting that Anhui Hundred describes its product as "honey syrup," demonstrating that the consumer wants something that looks like and tastes similar to honey.¹⁸ Petitioners also note that Anhui Hundred is a self-described producer of "honey products" on various websites.¹⁹ Petitioners argue that the National Honey Board's ("NHB") 2006 and 2009 survey of honey blends indicate that there is no evidence that consumers do, or are able to, distinguish between honey blends with more than 50 percent or less than 50 percent honey.²⁰ Additionally, Petitioners cite the affidavit of an industry expert which states that both industrial users and retail consumers' expectations for honey-rice syrup blends with more or less than 50 percent honey are identical.²¹

C. Ultimate Use of Merchandise

Petitioners allege that the expectations of ultimate purchasers are identical for honey-rice syrup blends regardless of whether they contain more or less than 50 percent honey. Petitioners

¹⁷ See Petitioners' Questionnaire Response at 29-32. Specifically, Petitioners cite the test report provided by Anhui Hundred, the U.S. Customs and Border Protection ("CBP") test report for JLS Trading, Inc. provided in Petitioners' Request, and the Eurofins Test Report in Anhui Hundred's Scope Request.

¹⁸ See Petitioners' Request at 30.

¹⁹ *Id.*, at 30, 44 and Exhibit 5. See also Petitioners' Questionnaire Response at 21-24, for additional examples of other PRC suppliers which emphasize honey in their advertising.

²⁰ See Petitioners' Questionnaire Response at 19.

²¹ See *id.*, at 19-20, and affidavit of David Allibone, President and CEO of the Sioux Honey Association, at Exhibit 4.

cite to Anhui Hundred's scope ruling request letter and the U.S. International Trade Commission ("ITC") Investigation Report to support their argument that both products will be used as honey-based sweeteners.²² Additionally, Petitioners cite as support for their argument an affidavit in which a honey industry expert states that honey-rice syrups composed of either more or less than 50 percent honey have identical ultimate uses.²³

D. Channels of Trade

Petitioners maintain that honey-rice syrup blends and subject merchandise would both be sold to industrial users or health food stores for use as a honey-based sweetener in the same channels of trade.²⁴ Petitioners note that both in-scope and out-of-scope honey-rice syrup blends are sold in identical containers on Anhui Freedom Foods' website, a PRC seller of "syrup honey."²⁵ Petitioners also cite to an affidavit in which a honey industry expert states that regardless of honey content, honey blends are sold to industrial bakers, health food stores, grocery stores, and in traditional honey bear bottles.²⁶

E. Advertisement and Display of Product

Petitioners maintain that honey syrups of varying contents are advertised identically. Petitioners contend that any honey/syrup mixtures are sold primarily in barrels, and displayed with the honey content displayed on the packaging.²⁷ Petitioners cite the website of Anhui Freedom Foods as evidence that honey blends ranging from 10 percent honey to 70 percent honey are labeled and packaged in identical containers.²⁸

²² See Petitioners' Request at 29-30, and 43-4.

²³ *Id.*, at 24 and Exhibit 4.

²⁴ See *id.* at 31 and 44.

²⁵ See Petitioners' Questionnaire Response at 24-25.

²⁶ See *id.*, at 24-25, and Exhibit 4.

²⁷ See Petitioners' Request at 31 and 44.

²⁸ See Petitioners' Questionnaire Response at 25 and Exhibit 17.

F. Commercial Availability

Petitioners state that, at the time of the investigation, honey-rice syrup blends did not exist in commercial quantities. Petitioners cite the ITC Investigation Report which does not specifically mention honey-rice syrup blends in its discussion of artificial honey, while it did list refined sugar and high-fructose corn syrup, as evidence that honey-rice syrup blends were not contemplated at the time of the Order.²⁹ Additionally, Petitioners note that the two previous investigations of honey imports from the PRC did (one of which specifically covered artificial honey and preparations of natural honey, and one which was limited to artificial honey containing more than 50 percent honey by weight) did not specifically mention the term “rice syrup.”³⁰ Petitioners allege that the ITC did not include rice syrup as a non-honey sweetener in the 2000-2001 investigation because only refined sugar and high fructose corn syrup were known to be mixed with honey, making them “honey adulterants,” and that the existence of these sweeteners is not evidence of a *bona fide* U.S. market for blends with rice syrup.³¹

Petitioners also state that PIERS ship manifest summaries show that there were no imports of honey-rice syrup blends from the PRC until August 2004.³² Additionally, according to the affidavit of a honey industry expert, who is also CEO of petitioner Sioux Honey Association, there were no commercially available honey-rice syrup blends being marketed in the United States at the time of the investigation.³³ Petitioners also note that several studies on honey adulteration published from 1991 through 2002 do not mention rice syrup as an adulterant, and argue that this is evidence that honey-rice syrup blends were not available at the time of the

²⁹ See *id.*, at 6.

³⁰ Specifically, Petitioners cite the ITC’s 1993-94 “safeguard” investigation, Honey from China, Inv. No. TA-406-13, USITC Pub. 2715 (Jan. 1994), and the 1994-95 AD investigation, Honey from the People’s Republic of China, Inv. No. 731-TA-722 (Preliminary), USITC Pub. 2832 (Nov. 1994). See Petitioners’ Questionnaire Response at 3-5.

³¹ *Id.*, at 6.

³² *Id.*, at 11.

³³ *Id.*, at 13, and Exhibit 4 at paragraph 2.

investigation.³⁴ Finally, Petitioners state that the NHB's 2002 Honey Attitude and Usage Study, which was published ten months after the Order went into effect, does not refer to any blend of honey with any non-honey sweeteners, indicating that such blends were not commercially available at that time.³⁵

Comments by Anhui Hundred

Anhui Hundred contends that honey-rice syrup blends are not newly developed products intended to circumvent the Order. Anhui Hundred argues that both artificial honey and food preparations existed before the initiation of the investigation, yet to its knowledge, neither Petitioners nor the Department attempted to include food preparations within the scope, and it is clear from the scope's language that a deliberate decision was made to include only food preparations of over 50 percent honey in the scope.³⁶ Additionally, Anhui Hundred argues that honey-rice syrup is not a substitute for pure honey, and to the best of its knowledge, honey-rice syrup is sold exclusively to commercial bakeries and process food manufacturers in large quantities.³⁷

Initiation of Later-Developed Merchandise Antidumping Duty Anticircumvention Inquiry

Based on the information provided by Petitioners described above, the Department finds that there is sufficient basis to initiate an antidumping duty anticircumvention inquiry pursuant to section 781(d) of the Act to determine whether honey-rice syrup blends are later-developed products that can be considered subject to the Order. While the Department notes that Anhui Hundred has raised legitimate questions with respect to whether rice-syrup is a later-developed product within the meaning of section 781(d) of the Act, these questions do not demonstrate that

³⁴ Id., at 14-16.

³⁵ Id., at 16-18.

³⁶ See Anhui Hundred Response at 3.

³⁷ Id., at 5.

the Department should not initiate this anticircumvention inquiry. Instead, because the Petitioners have provided the Department with adequate evidence as outlined above, the Department is initiating a later-developed merchandise anticircumvention inquiry and the Department will provide interested parties, including Anhui Hundred, an opportunity to provide evidence and argument within the context of that inquiry.

The Department will not order the suspension of liquidation of entries of any additional merchandise at this time. However, in accordance with 19 CFR 351.225(l)(2), if the Department issues an affirmative preliminary determination, we will instruct CBP to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of this inquiry.

We intend to notify the ITC in the event of an affirmative preliminary determination of circumvention, in accordance with 781(e)(1) of the Act and 19 CFR 351.225(f)(7)(i)(C), if applicable. The Department will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of the date of publication of this initiation notice.

This notice is published in accordance with section 781(d) of the Act and 19 CFR 351.225(i) and (j).

Christian Marsh
Acting Assistant Secretary
for Import Administration

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Date

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